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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,061	08/01/2001	Erwin Karl Meimer	TTLRCL.001A	6174

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EXAMINER

CHRISTMAN, KATHLEEN M

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 04/10/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/921,061

Applicant(s)

MEIMER, ERWIN KARL

Examiner

Kathleen M Christman

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the limitations of "a storage device comprising a plurality of questions and corresponding answers, where in the storage device defines a plurality of learning levels...". This language makes it unclear whether the "storage device" is a computer readable medium containing code or whether this material is merely written on a sheet of paper. It is also unclear how exactly a storage device is capable of defining. Further it is unclear whether the questions provided by the testing module are the same questions and associated answers or a different set of questions and associated answers as those provided for in the definition of the storage device. Further, the limitation "the computer" in lacks antecedent basis. As per claim 12, the limitation of "associating each questions with a retest time interval, wherein the retest time interval indicates a time that must be reached before the question is presented again, and if the user answers a selected question correctly, setting the retest time interval for a period of time that is greater than the current retest time interval" is confusing as these limitations appear already be provided for in claim 5 from which it depends. Similarly, the limitations of claim 13 already appear in claim 5.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

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by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 3-17, 20-30, and 32-36, as broadly interpreted, are rejected under 35 U.S.C. 102(e) as being anticipated by Vaughan, Jr. (US 6419496 B1, herein after Vaughan). Vaughan teaches an educational system and method which can be interpreted as the testing system of the claimed inventions. Vaughan teaches selecting a set of questions to be made available to a user, wherein each of the questions has an associated learning level (P-Level) and a retest time interval (L-level) that indicates a period of time that must pass between presentation of a respective question (number of session before an item is presented again); selecting one of the available questions from the set; testing the user with the selected question; determining whether the user answered the selected question correctly; if the user answered the selected question correctly, increasing the retest time interval to be greater than the current retest time interval for the selected question (as per claims 3-5, 12, 16, 21, 28, and 32-35); and if the user answered the selected question incorrectly, decreasing the retest time interval to be less than the current retest time interval for the selected question (as per claims 5, 13, 17, and 29), in Figure 4. If a user answers a question incorrectly, moving the question into a level designated for missed questions (claims 6 and 22), is shown as the P=0 level of Vaughan, this level is also the second lowest level (claims 8 and 24). If there are no "unseen items" this is also the lowest learning level (claims 7 and 23). Otherwise, the lowest level contains questions that have not been previously presented to the user (claims 9 and 25) is referred to as the "unseen items" or P=-1 level by Vaughan. If a user answers a selected question incorrectly, moving the selected question into the next lowest learning level (claims 10, 21, 26, and 36) is shown as reference 18 of Figure 4. Reference 19 of Figure 4, teaches if a user answers a selected

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question incorrectly maintaining the selected question at the selected learning level until the question is answered correctly, as in claims 11 and 27. Presenting the questions in sequence based at least in part upon the ordering of the learning levels, as in claims 15 and 21, is taught at col. 10: 20-30.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 18, 19 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan, Jr. (US 6419496 B1) in view of Ho et al (US 6212358 B1). Vaughan teaches all aspects of the claimed invention as shown above except the testing module ceasing to ask a question (claims 1, 2, 19, and 31) and if the selected question is answered correctly, the testing module determines whether the time interval is increased past a predefined threshold (claim 18). Ho et al teaches these features in Figures 7 and 9, and their associated text. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the removal of questions, as taught by Ho et al, into the Vaughan, Jr. reference so as to remove items that a user no longer needs to review.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Boon (US 6447299 B1) teaches a learning system which records the time that an item is learnt and bases review upon that time
- b. L'Allier et al (US 6039575) teaches a method of learning wherein a specific sequence of education is developed
- c. Ferrell (US 5885083) teaches a learning system which removes learnt items from the item pool

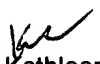
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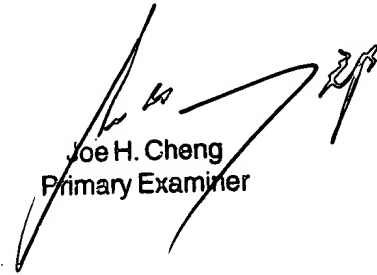
- d. Sheppard, II (US 5820386) teaches an educational system including the repetition of specific exercises

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (703) 308-6374. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (703) 308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Kathleen M. Christman  
April 3, 2003

  
Joe H. Cheng  
Primary Examiner